UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN THE MATTER OF: . Case No. 15-40265-cec
.
. 271-C Cadman Plaza East
NANCY ROJAS-TORRES, . Brooklyn, New York 11201
Debtor. .
.
- - - - - - - - - - - - - - - -. October 7, 2015

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CARLA E. CRAIG,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtor: JULIO E. PORTILLA, ESQ.
111 Broadway, Suite 706
New York, NY 10006

For AAPP, LLC: KARL SILVERBERG, ESQ.
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Central Islip, NY 11722

For Empire Assets: DAVID CARLEBACH, ESQ.
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U.S. TRUSTEE: OFFICE OF UNITED STATES TRUSTEE
BY: WILLIAM CURTIN, ESQ.
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ECRO: Juliet Lecky

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THE CLERK: Number 32 and 33 on the calendar, Nancy Rojas-Torres. Appearances, please.

MR. PORTILLA: Good afternoon, Your Honor, Office of Julio E. Portilla for the debtor, Nancy Rojas.

MS. SILVERBERG: Karl Silverberg of the firm Silverberg, P.C. for non party interest, AAPP, LLC, that's interested in purchasing one of the assets of the debtor.

MR. CARLEBACH: David Carlebach, representing Empire Assets Growth, secured creditor.

MR. CURTIN: William Curtin for the United States Trustee.

MR. PORTILLA: And Your Honor, just for the record, I have the debtor, Nancy Rojas, in the courtroom as well, with her daughter, Joanna Soto.

THE COURT: Okay, can I, just before, I read your letter, Mr. Portilla, which outlines a deal, which I guess is going to be the outline of a new plan, is that the idea?

MR. PORTILLA: Yes, Your Honor.

THE COURT: A plan of reorganization.

MR. PORTILLA: Yes, Your Honor.

THE COURT: Okay. I just, I would like to know who paid your fee in this case?

MR. PORTILLA: The debtor did, Your Honor.

THE COURT: Okay. Did she, who did she -- did she get the money from somebody else?

MR. PORTILLA: She, some of the money I believe came from the income that she was collecting from the building.

THE COURT: Did some of the money come from another source? I guess in particular I'm wondering if the, was the individuals either behind AAPP, played any part in paying your fee?

MR. PORTILLA: No. No.

THE COURT: Okay.

MR. PORTILLA: No, the individuals behind AAPP are individuals that came into the picture subsequent to the fees and subsequent to the filing of the petition.

THE COURT: And how did that come about? How did that happen, that they came into the picture?

MR. PORTILLA: Well, the, one of the managing members of the LLC is an owner of an restaurant and lounge in which the debtor's daughter joined as sort of a manager. And essentially he, she's been working for him for some years now. And she expressed her desire to, or her interest in trying to see whether or not he'd be interested in helping the family out u under the circumstances. Thus conversations were spurred by Joanna going up to Mr. Emanuel Pepes (phonetic) who owns the restaurant and who she works with, she's an employee of, which eventually ended up in putting together a deal that more or less was presented to the Court this early afternoon.

THE COURT: So the individuals, there was one individual then, Emanuel Pepes, and the other person is? That's Mr. P. I guess?

MR. SILVERBERG: No, the other person is Priscilla Luna.

THE COURT: Sorry?

MR. SILVERBERG: Priscilla Luna.

THE COURT: Priscilla Luna and Emanuel Pepes.

MR. SILVERBERG: Pepes.

THE COURT: Okay. All right. Okay, so the deal now that's under consideration or that you're proposing is that the debtor will be paid $300,000 for her, for 50 percent interest in the property, is that right?

MR. PORTILLA: Yes, Your Honor.

THE COURT: Is it 50 or 51, because that's a material difference.

MR. PORTILLA: That hasn't been fully negotiated as of yet.

THE COURT: 50 is a lot more favorable to the debtor.

MR. PORTILLA: Agreed, Your Honor. And essentially it's going to require the parties to have a sit down in order to simultaneously sign all the documents in connection with this deal. I had a brief discussion with the debtor prior to and subsequent, prior to the hearing, and during the negotiation process, and then she has expressed her, what she wants to me. We just haven't had a chance, counsel and I haven't had a chance to rediscuss that minor/big detail of the deal.

THE COURT: Okay. So who is, what is contemplated here, this will be restructured, there will be a $300,000 down payment, a new loan, a new hard money loan, meaning high interest rate loan, correct? And that's, what's the next step that's planned?

MR. PORTILLA: The next, the plan essentially, the representation that was made to the Court the last time at the last hearing, was that it was going to be a -- subsequent to the $300,000 payment, that it would be a refinance of the property, using the same lender. Subsequent to the hearing, I had a brief conversation with Emanuel Pepes in regards to that deal. And it' my understanding that he is not going to take out a hard money loan. The plan is to essentially reinstate the loan. And essentially either pay off the loan, or continue making mortgage payments subsequent to reinstatement of the actual loan.

THE COURT: Okay, who is the, what is the amount, what are the arrears?

MR. CARLEBACH: As of the last hearing, where the Court had directed us to give a reinstatement number, it was 347.

THE COURT: Okay.

MR. CARLEBACH: And it's grown somewhat since, incrementally. But it is, it's in that range.

THE COURT: So what's the mortgage payment once this is reinstated? Do you know? What's the regular mortgage payment? The pre -- without default interest?

MR. PORTILLA: $5,228.

THE COURT: Is this something that's covered by the rents of the building?

MR. PORTILLA: Yes, Your Honor. The rent roll right now is about, close to 9, $10,000.

THE COURT: And is it being collected?

MR. PORTILLA: Yes, it is. The receiver is collecting the rent. And he's holding, it's my understanding, over $60,000 in escrow.

THE COURT: Is the receiver collecting the full rent roll?

MR. PORTILLA: That's my understanding, yes, Your Honor. And he's also commenced action against prior tenants that vacated the premises and failed to pay rent as well.

THE COURT: What is contemplated about how the loan will be served going forward?

MR. PORTILLA: Once the debtor and members of AAPP, LLC come into a core agreement, it's my understanding that AAPPC -- AAPP will manage the building, most likely not, they're going to hire a managing company to collect the rent. The proceeds generated from the building will be used to make the mortgage payments. In the process, the plan is to eventually refinance the building and pay off the lender.

THE COURT: So, if they're collecting 9,000 in rent, and the mortgage payment is what, did you say 55000 roughly?

MR. PORTILLA: 5600.

THE COURT: 5600. So, there's some additional funds left over, what happens to those? And who's managing the building now? I mean, I guess the receiver is. But prior to the default, was Ms. Rojas managing the building?

MR. PORTILLA: Ms. Rojas was managing the building prior to it, prior to the receiver.

THE COURT: Why do you need a professional management company?

MR. PORTILLA: Well, that's something that was thrown into the negotiations just to ensure that the mortgage payments will be made on the monthly basis. And it will be a more structured and to alleviate any stress upon the debtor to make the payments that's required.

THE COURT: So but, does the debtor rely on the building for her income? In other words, does she use the rents of the building to support herself? Does she have another job?

MR. PORTILLA: No, she does not, Your Honor.

THE COURT: So she does then, right?

MR. PORTILLA: Correct.

THE COURT: So what, will she be permitted to continue to do that?

MR. PORTILLA: Those are terms that are also being discussed. Once we have a full grasp of the total amount of income from the receiver, those are the, those numbers more or less are going to be negotiated in regards to what she's going to be entitled to once all the property related charges are taken from the proceeds.

THE COURT: Okay, all right. Anything, anybody have any questions besides me?

MR. SILVERBERG: If I may chime in on behalf of AAPP. One of the things that, my client would like to move forward if possible with this in an expeditious manner. One of the things that my client does need is a payoff, a formal payoff from Empire Assets. So if he does want to refinance he can do that. He does need a formal statement of the rent roll from the receiver. We haven't, we received some documents from Mr. Portilla, but we haven't received anything directly from the receiver himself.

THE COURT: Well, have you requested it from him?

MR. SILVERBERG: I think my client has had some difficulty getting it. But we, but I'm saying that my client needs something that he can take to a bank to show what the income in from this property.

THE COURT: So he needs a rent roll.

MR. SILVERBERG: Yes. I'm not sure to what extent the Court has authority or ability to help expedite that. But I mention that to the Court.

THE COURT: I think you can compel, this is the receiver who's remained in possession, was there an order that -- yes, I guess that's right, you --

MR. CARLEBACH: There was a stipulation and you know, he had some, there was some difficulty pre-petition in the receiver getting established. And I'm sure whatever documentation he has he'll be happy to turn over.

THE COURT: Well he must have, he should be able to create a rent roll, correct? Write up a rent roll.

MR. CARLEBACH: Yeah. I believe, he's been filing reports, which have all of the details. There is an accounting that he filed, I think it was in August, which has all the, it's all in there. It's on the docket.

THE COURT: It's dated at this point. Outdated at this point.

MR. CURTIN: We don't have information, Your Honor, William Curtin for the United States Trustee, we don't have information for June through August. That's the, and that's going to become relevant with this amended plan.

THE COURT: Well, somebody needs to either, either you need to get the information or get some kind of a motion to get it.

MR. PORTILLA: Your Honor, I also may add one thing that was brought to my attention. The receiver is essentially in the process of trying to evict my client from the premises.

THE COURT: Well, is she paying rent?

MR. PORTILLA: Yes.

THE COURT: Well, then why is he trying to evict her?

MR. PORTILLA: For some reason there has been some, he claims he hasn't received rental income from them, yet they have produced copies of certified checks, money orders, in which they sent out to the receiver. But he's not acknowledging their payment, thus they were served with a notice of non payment. And it's my understanding that he's commencing eviction proceedings.

THE COURT: I think that would be in violation of the automatic stay, wouldn't it?

MR. PORTILLA: I agree, Your Honor.

MR. CURTIN: It's an individual case.

MR. CARLEBACH: He's not here today, the receiver, so I think this is a little -- he did come to the last proceeding.

THE COURT: Well, you know, whose fault is that that he's not here?

MR. CARLEBACH: Well, he, well, I don't know that he's required to be here.

THE COURT: He's not required to be here.

THE COURT: He's not required to be here, but if he's not here, you know, you can't tell me I can't proceed in his absence.

MR. CARLEBACH: I just think that the debtor can make allegations of that nature, you know, without having somebody, giving somebody -- raising it now for the first time in a hearing in this court that has nothing to do with that. You know, I didn't receive a letter, nobody got any notification that there's any such issue. And now he's saying, is paying rent, isn't paying rent. I mean, I'm happy to work with counsel to resolve it if there's an issue. But I just feel a little blind sided. And I'm sure the receiver would feel it -- I'm sure he'd have something to say about it if he knew there was an issue. But nobody was told there was an issue.

MR. PORTILLA: The receiver, I did speak to the receiver and it's my understanding that she was going to reach out to David to discuss the matter. I'm not sure that happened or not. But he did send me the notice to evict my client, and he was going to proceed within the realms of the landlord/tenant court in order to try to evict my client.

THE COURT: Well, I assume you're not going to let that happen, right Mr. Portilla?

MR. PORTILLA: Of course Your Honor, I'm not.

THE COURT: So what are you going to do to stop that?

MR. PORTILLA: I'm going to file -- if that's the case, I'll file a motion for contempt for violating the automatic stay.

THE COURT: Did you send him a notice that, a letter notifying him that his action is in violation of the automatic stay?

MR. PORTILLA: I will do that today. But I did have a conversation with him and I did reiterate the fact that any action that he pursued against the debtor will have to be by court order because there is an automatic stay in effect. We did have that conversation.

MR. CARLEBACH: The other thing I wanted to point out, Your Honor, just generally regarding the proceeding today, just to remind the Court of the genesis of how this sort of all came to pass. You know, we were in front of the Court --

THE COURT: I remember this.

MR. CARLEBACH: Right, and we tried to cooperate with the debtor in terms of you know, they told us they had the settlement and wanted us to be the hard money lender.

MR. PORTILLA: Why are we having this conversation now, I thought we were --

THE COURT: See, and your point is what, Mr. Carlebach?

MR. CARLEBACH: My point is is that the secured creditor reserves all of its rights in terms of confirmation of its own plan. We thought we were going to have a deal. Now we find out, it's been a month has past, I get this letter an hour before the hearing about a proposed plan, a proposed contract. You know, this, you know, I'm simply saying, we reserve our rights to move forward with our plan, which is confirmation ready.

THE COURT: Well, it's not ready for confirmation because we haven't had a hearing yet to determine the value of the property.

MR. CARLEBACH: No, I understand.

THE COURT: Because it could not be --

MR. CARLEBACH: I understand that.

THE COURT: It can't be confirmed

MR. CARLEBACH: I understand that, and like I said, we've been trying to work with the debtor. And I had some conversations with Mr. Silverberg. But we can't proceed in this fashion where we get papers an hour before a hearing and are asked --

THE COURT: So what --

MR. CARLEBACH: -- to figure stuff out.

THE COURT: What I think I need to do here is set, direct you to file an amended plan and set a date by which -- an amended debtors' plan, and set a date for you to file it. And you all need to get your act together, Mr. Silverberg, and figure out the deal that you're cutting between each other. And I'm going to be looking at it to make sure that the debtor's not getting the short end of the stick here as well.

MR. SILVERBERG: Yes, Your Honor. Understood, Your Honor.

THE COURT: So, and but in the absence of a plan moving forward, you know, a deal moving forward, a plan moving forward, that on your side, we'll go back and have a hearing on valuation. And maybe the debtor will end up walking away with, walking away from the building and getting her exemption. Or maybe not. I don't know.

But if you can do this deal, if the debtor can stay in the building and retain a half interest in it, it's probably a pretty good deal. It seems like it to me, so.

MR. SILVERBERG: Well, Your Honor, just for the sake, I guess, of full disclosure, the 51 percent was in lieu of 50 percent ownership with the right to control and manage, just so the Court is aware.

THE COURT: Meaning what?

MR. SILVERBERG: Meaning --

THE COURT: 51 percent, is it 50 percent or 51 percent?

MR. SILVERBERG: It's 50 percent with the right to control and manage, or 51 percent.

THE COURT: I see. So she would not have to be consulted I guess, on actions taken with respect to the building.

MR. SILVERBERG: That's the intent at the moment, yes.

THE COURT: But she'd have a financial stake in the building so that if it were sold or refinanced, she'd be entitled to --

MR. SILVERBERG: Her share.

THE COURT: Her share of the proceeds.

MR. SILVERBERG: Certainly, yes.

THE COURT: And the rent, it's contemplated the rent would be used to pay the building's --

MR. SILVERBERG: Expenses and carrying costs.

THE COURT: Expenses and carrying costs. Would the rest of the rent belong to her?

MR. SILVERBERG: Well, the rest of the rent would be deemed, I presume, profits, from this business. Which would be split according to the parties' ownership interest.

THE COURT: So she would not get 100 percent of that. So she would -- so you would have to see whether she can live on that. I'm talking to you, Mr. Portilla.

MR. PORTILLA: Yes, I mean, obviously we would have to take, you know, consider the fact that she was, she depends on the building for her living expenses, her daily living expenses. That would need to be taken into consideration.

THE COURT: Right. And I guess you'd have to figure out, I guess that what happens if there's a problem and the rents are insufficient to pay the mortgage. I mean, I assume that, how did the debtor get into this problem in the first place? I assume that's what happened. Do you know how the debtor got into this problem in the first place?

MR. PORTILLA: Well, prior to the bankruptcy --

THE COURT: 340,000 of arrears is a lot.

MR. PORTILLA: There was a foreclosure action that was filed by the prior lender, which we defended. There was an issue regards to whether or not payments were misapplied. There was summary judgment that was entered in State Court indicating that there was not enough evidence so to speak, to make a determination whether or not mortgage payments were misapplied. But more or less, that was my client's position at the time, that she was making mortgage payments for the year 2012. And she provided receipts, but when Chase transferred the note or sold the note to Coughlan (phonetic) Funding, her payments for 2012 were not applied to the note. So that's one of the defenses that we made in the foreclosure action.

THE COURT: Well, what, and the Court said there wasn't enough evidence to determine the case or not?

MR. PORTILLA: Well, I correct myself, Your Honor, they never ruled on that issue, I'm sorry, they never ruled on that issue. They basically said that we didn't provide enough information more or less, for them to deny summary judgment, just based on those allegations.

THE COURT: So the point being what here?

MR. PORTILLA: Well, to answer Your Honor's question, --

THE COURT: That's how she got into, you say it may be that she was making the payments all along and they were misapplied.

MR. PORTILLA: Correct. And subsequent to the foreclosure action was commenced, payments were not being made Hence we got to this point.

THE COURT: Okay. All right, I guess you're going to need to work out some details like what happens if there isn't enough, in any particular month, there isn't enough rent to pay the mortgage, how is that going to be handled. So I'm going to give you -- it's now been what, about 30 days since you were here last, right? When were you here? Yes, more than 30 days ago, it was August 26th. So I'm going to direct that you file an amended -- I mean this shouldn't be that complicated to sort out, to negotiate, I wouldn't think.

So I'm going to direct that you file an amended plan and disclosure statement that reflects this deal, or reflects your deal, by the end of this month. That's three and a half weeks from now. That should be plenty of time I would think. And I'll have you back here on November 4th at 3:30. And I'm going to issue an order to this effect.

Do have any questions here?

MR. CARLEBACH: Your Honor, again I'm not sure how we'd become, our plan has begun sidetracked here. We were supposed to, he was supposed to file a disclosure statement on August 26, we had a hearing.

THE COURT: What do you want me to do? What are you asking?

MR. CARLEBACH: I would like a confirmation hearing, I'd like a contested confirmation hearing to be scheduled as well.

THE COURT: You want me to set it down, are you ready to go to trial on November 4th?

MR. CARLEBACH: We are.

THE COURT: Do you want to do that?

MR. CARLEBACH: We are, subject to the availability of the appraiser, we're ready, absolutely ready to go to trial. And I don't see a deal here happening. We were supposed to cut a deal, it was supposed to happen then, we're now talking about -- and again I don't begrudge the debtor's right to start a disclosure statement process. But we're way ahead of that, and we should have our right to move forward. And I do want to go forward with the valuation hearing at the next available date.

THE COURT: I'll give you a date at the end of -- do we have end of November dates? I'll give you December 1 for a valuation hearing. So that would give you a chance hopefully to confirm your plan before then. If we could -- do you think we could combine the disclosure statement hearing and plan confirmation hearing in this case? Can you see any reason why not? Assuming Mr. Portilla works this out and files a plan and disclosure statement on the 30th?

MR. PORTILLA: I think that should be fine, Your Honor. I don't think there are --

THE COURT: We could --

MR. PORTILLA: -- there are many other parties that would be affected.

THE COURT: I don't think --

MR. PORTILLA: No we would see it in advance, no it should be fine.

THE COURT: Set it down for a, set that down for a confirmation hearing on December 1. So let's plan on that.

MR. CURTIN: We're still going to come back on the 4th though, right, Your Honor?

THE COURT: I want you to come back on the 4th.

MR. CURTIN: Yeah, I think that makes sense.

THE COURT: Because I think that will be, I will have looked at the disclosure statement, and we can discuss any issues with it.

MR. CURTIN: Right, it makes sense.

THE COURT: And any issues with the plan.

MR. CURTIN: Okay.

MR. PORTILLA: Your Honor, just for clarity. You say end of the month, put it down for the 31st. But Your Honor just said the 30th.

THE COURT: Oh, that's 31 days, the 31st is a Saturday.

MR. PORTILLA: Okay.

THE COURT: So, file it by Friday.

MR. PORTILLA: Okay.

MR. CURTIN: So we're going to have both confirmation hearings scheduled for the same time?

THE COURT: Yes.

MR. CURTIN: What time on the 1st Your Honor?

THE COURT: Yes, 10:30.

MR. CURTIN: Thank you.

THE COURT: Okay, does anyone have anything else? What time on the 4th, did we say?

MR. CURTIN: 3:30, Your Honor.

THE COURT: 3:30. Okay. Thank you.

MR. PORTILLA: Thank you, Your Honor.

MR. CARLEBACH: You're going to issue an order, Your Honor?

THE COURT: I am.

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C E R T I F I C A T I O N

I, Patricia Poole, court approved transcriber, certify that the foregoing is a correct transcript from the official digital audio recording of the proceedings in the above-entitled matter.

/S/PATRICIA POOLE

TRACY GRIBBEN TRANSCRIPTION, LLC November 27, 2015

DATE